

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Joseph Anthony Roberson,

Petitioner,

v.

Civil No. 13-2100 (JNE/SER)  
ORDER

State of Minnesota,

Respondent.

This case is before the Court on a Report and Recommendation issued by the Honorable Steven E. Rau, United States Magistrate Judge, on January 31, 2014. The magistrate judge recommended that Respondent's motion to dismiss be granted, Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 be denied, and that this case be dismissed without prejudice. The magistrate judge made his recommendation because Petitioner has not yet exhausted his available state court remedies and is currently pursuing his remedies in that forum. Petitioner did not file a response to the Respondent's motion or an objection to the Report and Recommendation. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Magistrate Judge's Report and Recommendation [Docket No. 34].

An appeal cannot be taken from a final order denying a petition under § 2254 without a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006); Fed. R. App. P. 22(b)(1). A court cannot issue a certificate of appealability unless the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because no such showing has been made and Petitioner has not yet exhausted his state court remedies, the Court declines to issue a certificate of appealability.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT  
IS ORDERED THAT:

1. Respondent's Motion to Dismiss [Docket No. 30] is GRANTED.
2. The Petition for Writ of Habeas Corpus [Docket No. 1] is DENIED.
3. This case is DISMISSED without prejudice.
4. A certificate of appealability is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 11, 2014

s/Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge